EQUITABLE INTERFERENCE IN CRIMINAL PROCEEDINGS.—It is a principle as old as equity jurisprudence itself, that courts of equity are clothed with jurisdiction to restrain by injunction proceedings in all cases where by fraud, accident, mistake or otherwise, a party has obtained an advantage in a court of law which must necessarily make that court an instrument of injustice.[1] This principle, however, refers only to proceedings in which there is involved some question relating to the enjoyment of property or civil rights. For some time after the inauguration of the chancery jurisdiction in England, it was permissible in certain cases—though infrequent in practice—for equity to interfere in criminal proceedings, either to enforce the decree of the common law court, or to prevent it from inflicting injustice upon the individual. But this practice became obselete at an early date, and today it is almost universally held that equity has no jurisdiction to interfere by injunction or otherwise in the administration of the criminal law or in criminal proceedings under a valid law where no question concerning rights of property is in controversy.[2]

The practically unanimous agreement of the authorities in denying to courts of equity, jurisdiction to interfere in criminal proceedings and in certain *quasi* criminal proceedings, seems to be due to a disposition on the part of the courts consistently to recognize and strictly adhere to two peculiarly distinguishing principles which define chancery jurisdiction; *first,* that equitable jurisdiction exists primarily to safeguard those civil rights which pertain to the enjoyment of property; and *second,* that equity has no jurisdiction where there has always been a plain, adequate and complete remedy at law. A cursory review of some of the leading authorities will show that wherever equitable intervention has been denied in a criminal or *quasi* criminal proceeding, the court, in rendering its decision, has invoked one or both of these principles and refused to extend the jurisdiction of equity beyond the limits which they impose.

Where an officer, acting in pursuance of a valid law, makes an arrest under a criminal charge, it has been held that equity cannot enjoin the arrest.[3] In a well considered New York case,[4] the court made the following observation apropos of its refusal to grant the injunction sought: "The administration of the criminal law would be greatly paralyzed if no criminal could be arrested until it could be infallibly ascertained that he was guilty of the offense charged."

But equitable jurisdiction will be allowed for the purpose of restraining criminal prosecutions under unconstitutional enactments

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[1] Earl of Oxford's Case, 1 Ch. Rep. 1; 2 DANIELL, CHANCERY PL. AND PRAC. (6th Am. ed.) 1623.

[2] Davis *v.* American Society, etc., 75 N. Y. (30 Sick) 362 (1878); Tyler *v.* Hamersley, 44 Conn. 419, 26 Am. Rep. 471 (1877); *In re* Sawyer, 124 U. S. 200 (1888); Stuart *v.* Board of Supervisors, 83 Ill. 341 (1876); Phillips *v.* Mayor, 61 Ga. 387 (1878); Gault *v.* Wallis, 53 Ga. 675 (1875); Pope *v.* Savannah, 74 Ga. 365 (1884). See also KERR, INJUNCTIONS, 1.

[3] Davis *v.* American Society, etc., *supra;* Mayor *v.* Patterson, 109 Ga. 370, 34 S. E. 600 (1899).

[4] Davis *v.* American Society, etc., *supra.*

when the prevention of such prosecutions is essential to safeguard rights of property.[5]

A great many cases involving the question of equitable jurisdiction to interfere in proceedings at law, have arisen under municipal ordinances regulating the tenure of office and conduct of city officials. In *Delchanty* v. *Warner*,[6] it was held that a court of equity could not enjoin the city officials from removing a party from office, forbidding him to discharge further duties of that office, and appointing a successor to his place. In such a case, the proper remedy may be had in a court of law, by *quo warranto* against the plaintiff's successor in office, and by *mandamus* against the officials who removed the plaintiff from office. This view was sustained by the U. S. Supreme Court in the case of *In re Sawyer*,[7] where a municipal police justice was tried and removed from office under an ordinance empowering a committee from the city council to hold proceedings for the purpose of hearing charges preferred against officials of the city and taking action on such charges; the court deciding that an injunction to stay the committee's proceedings could not be granted.[8]

Somewhat inseparably related with the immediately preceding class of cases, are those cases which support the proposition that a court of equity has no jurisdiction of questions of a purely political nature.[9] In one case [10] it was declared that equity had no power to enjoin a city council from abolishing the office of Police Commissioner; and the same court held that equity was without jurisdiction to enjoin the board of commissioners from canvassing in an election.[11]

It should not be concluded however, from the holdings adverted to above, that equitable intervention in the conduct of public affairs is never proper. That public bodies and public officers may be restrained by injunction from proceeding in violation of law, to the prejudice of the public or injury of individual rights, is settled beyond question.[12]

In commenting on the question of equitable interference in criminal proceedings, Mr. Pomeroy, in his treatise on Equity Jurisprudence, suggests an additional ground for refusing such intervention, writing as follows:

> "Such a suit is, in effect, against a State and is therefore prohibited by the federal constitution." [13]

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[5] Dobbins *v.* Los Angeles, 195 U. S. 223 (1904); Southern Express Co. *v.* Mayor, 116 Fed. 756 (1902). See also Davis, etc., Co. *v.* Los Angeles, 189 U. S. 207 (1903).

[6] 75 Ill. 185 (1874). See also Waters Peirce Oil Co. *v.* Little Rock, 39 Ark. 412 (1882).

[7] *Supra.*

[8] See 2 HIGH, INJUNCTIONS (4th ed.) § 1240.

[9] Sherridan *v.* Colvin, 78 Ill. 237 (1875); Dickey *v.* Reed, 78 Ill. 261 (1875); Marshall *v.* Board of Managers, 201 Ill. 9, 66 N. E. 314 (1902).

[10] Sherridan *v.* Colvin, *supra.*

[11] Dickey *v.* Reed, *supra.*

[12] People *v.* Canal Board, 55 N. Y. 390 (1874). But see Greene *v.* Mumford, 5 R. I. 472 (1858).

[13] 6 POMEROY, EQUITY JURISP., § 644.

This point was not raised in any of the cases which have been cited as authority in the present discussion, but it is submitted that Mr. Pomeroy's position is thoroughly tenable. The attitude which the courts have taken toward this question, and which has been the basis of the decisions in the leading cases on the subject, is admirably expressed in the opinion delivered by the Court in Sherridan *v.* Colvin,[14] in which it was said as follows:

> "The subject matter of the jurisdiction of a court of chancery is civil property. The court is conversant only with questions of property and the maintenance of civil rights. Injury to property, actual or prospective, is the foundation upon which the jurisdiction rests. The court has no jurisdiction of matters merely criminal or merely immoral, which do not affect any right to property."

T. M. B.

LIABILITY OF A MASTER FOR THE TORTS OF HIS SERVANT'S UNAUTHORIZED ASSISTANT.—It is not within the province of this note to consider cases in which the servant has authority, either express or implied, to employ assistants. Nor shall we discuss instances in which the acts done are without the scope of the servant's employment. The cases considered are those in which a mere servant invites or permits a stranger to assist, in the absence of authority from his master.

The courts have not always given uniform answers to the question of the liability of a master to third persons for the negligence of one to whom his servant, without special authority, has attempted to delegate his undertaking in whole or in part. In the early English case of *Booth* v. *Mister*,[1] the owner of a horse and cart was held liable where, through the negligence of one to whom his servant had given the reins, plaintiff was injured. In holding the master liable, Lord Abinger said:

> "As the defendant's servant was in the cart, I think that the reins being held by another man makes no difference. It was the same as if the servant had held them himself."

In a leading case [2] on the subject in this country, a master had directed his servant to shovel snow off a roof. Without authority to do so, the servant procured an assistant, through whose negligence a passer-by was injured, and the master was held liable. This liability of the master, where the stranger is acting in the presence of the servant and with his consent, has been upheld by many later cases.[3] It is often said in these cases that the assistant is the mere

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Supra.

[1] 7 Car. & P. 66, 32 Eng. Com. Law 439 (1835).

[2] Althorf *v.* Wolfe, 22 N. Y. 355 (1860).

[3] Wellman *v.* Miner, 44 N. Y. S. 417 (1897); Hollidge *v.* Duncan, 199 Mass. 121, 85 N. E. 186, 17 L. R. A. (N. S.) 982 (1908); Geiss *v.* Twin City Taxicab Co., 120 Minn. 368, 139 N. W. 611, 45 L. R. A. (N.